

ELC.8352

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

DANNY PRICE GARRETT

Plaintiff,

v.

**JAMES WALTER CAVE AND EAN
HOLDINGS, LLC**

Defendants.

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**CIVIL ACTION NO. 2:17-cv-59
JURY DEMAND**

**DEFENDANT ENTERPRISE LEASING COMPANY OF CHICAGO, LLC,
INCORRECTLY NAMED AS EAN HOLDINGS, LLC'S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW ENTERPRISE LEASING COMPANY OF CHICAGO, LLC, incorrectly named as EAN HOLDINGS, LLC, in the above entitled and numbered cause, and files this Notice of Removal of the above-captioned case. Removal is based on 28 U.S.C. § 1332 (diversity jurisdiction) and is authorized by 28 U.S.C. §§ 1441 and 1446.

**I.
BACKGROUND**

1. On February 23, 2017, Plaintiff sued James Walter Cave and EAN Holdings, Inc., in the 108th Judicial District Court of Potter County, Texas, Cause No. 106231-E, alleging the negligence of Defendants James Walter Cave and EAN Holdings, Inc.

2. Service of process was mailed on February 27, 2017, to EAN Holdings, LLC's registered agent The Corporation Company, located at 1833 South Morgan Road, Oklahoma City, OK 73128. Service of process was received by The Corporation Company on March 2, 2017, at its office in Oklahoma City, OK.

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3. Defendant James Walter Cave is a foreign citizen of Winsford, England.

4. Plaintiff Danny Price Garrett is a citizen of the State of Texas.

5. Defendant **ENTERPRISE LEASING COMPANY OF CHICAGO, LLC**, is organized in the State of Delaware, with its corporate office and principal place of business in the State of Illinois.

6. Incorrectly named **EAN HOLDINGS, LLC**, is organized in the State of Delaware, with its corporate office and principal place of business in the State of Missouri.

7. Plaintiff's Original Petition, filed contemporaneously herewith, states that the amount damages sought is more than \$200,000.

II.

BASIS FOR REMOVAL

8. Removal is proper under 28 U.S.C. § 1332(a) because Plaintiff's suit is a civil action in which this Court has original jurisdiction over the parties, based upon diversity jurisdiction under 28 U.S.C. § 1332. This action is removable to this Court pursuant to the provisions of 28 U.S.C. §1441(b) because Plaintiff is a citizen of the State of Texas, Defendant James Walter Cave is a citizen of England, and Defendant **ENTERPRISE LEASING COMPANY OF CHICAGO, LLC** is a limited liability corporation, with its principal place of business in the State of Illinois, and the amount in controversy exceeds \$75,000.

A. Complete Diversity Exists.

9. As the Court is certainly aware, for diversity purposes, a person is considered a citizen of the state where that person is domiciled. Plaintiff is a person and domiciled in the State of Texas. Defendant James Walter Cave is a person and domiciled in Winsford, England. If the person is an entity, the citizenship of an LLC is determined by the citizenship of its members. Defendant **ENTERPRISE LEASING COMPANY OF CHICAGO, LLC** is not
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domiciled in the State of Texas, but rather was formed in Delaware, with its principle place of business in Illinois. Similarly, the incorrectly named **EAN HOLDINGS, LLC**, is not domiciled in the State of Texas, but was also formed in Delaware, within its principle place of business in Missouri.

10. The only Managers listed for both Defendant **ENTERPRISE LEASING COMPANY OF CHICAGO, LLC**, and the incorrectly named **EAN HOLDINGS, LLC**, are located in Missouri.

11. Because the Plaintiff, Defendant **ENTERPRISE LEASING COMPANY OF CHICAGO, LLC**, the incorrectly named **EAN HOLDINGS, LLC**, and Defendant James Walter Cave do not share citizenship in any state, removal is proper on diversity grounds.

12. All Defendants are now, and were at the time the removed action was commenced, diverse in citizenship from the Plaintiff. 28 U.S.C. § 1332. *See* Plaintiff's Original Petition.

B. The Amount in Controversy Exceeds \$75,000.00.

13. As previously stated, Plaintiff filed his Original Petition on February 27, 2017. Plaintiff identified the amount in controversy to be over \$200,000, and less than \$1,000,000.

14. Accordingly, Plaintiff seeks damages beyond the threshold amount of \$75,000, establishing an amount in controversy over \$75,000.

15. Accordingly, because this notice of removal has been filed within thirty days after Plaintiff provided his Original Petition, providing his claim for relief, this removal is proper and timely under 28 U.S.C. §1446(b)(3).

16. The United States District Court for the Northern District of Texas, Amarillo Division, embraces Potter County, Texas, the place where the state court action was filed and is

pending.

17. The live pleadings before the state court are solely those of Plaintiff's Original Petition and Defendant's Original Answer. No other motions are pending before the state court.

18. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as **Exhibit "A,"** as required by 28 U.S.C. § 1446(a).

III. REQUEST FOR JURY TRIAL

19. Defendant **ENTERPRISE LEASING COMPANY OF CHICAGO, LLC,** incorrectly named as **EAN HOLDINGS, LLC,** hereby demands a trial by jury in accordance with the provisions of FED. R. CIV. P. 38.

WHEREFORE, PREMISES CONSIDERED, **ENTERPRISE LEASING COMPANY OF CHICAGO, LLC,** incorrectly named as **EAN HOLDINGS, LLC,** as a party in diversity with the Plaintiff and Co-Defendant, respectfully requests that this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Northern District of Texas, Amarillo Division, and for such other and further relief to which he may show himself to be justly entitled in equity or law.

Respectfully submitted,

FEE, SMITH, SHARP & VITULLO, L.L.P

/s/ Brett A. Smith

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**ATTORNEYS FOR DEFENDANT
ENTERPRISE LEASING COMPANY OF
CHICAGO, LLC, INCORRECTLY NAMED
AS EAN HOLDINGS, LLC**

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true and correct copy of the foregoing instrument has been mailed, telecopied or hand delivered to all attorneys of record in this cause of action on the 31st day of March, 2017.

Via Certified Mail/RRR

Jesse Quackenbush
Quackenbush Law Firm
801 South Fillmore
Suite 460
Amarillo, TX 79101

Via UPS Worldwide

James Walter Cave
80 Chester Road
Winsford, CW7 2NQ
United Kingdom, England

/s/ Brett A. Smith

BRETT A. SMITH

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